

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DARRYL W. HUDSON,  
Plaintiff,  
v.  
C. PFEIFFER, et al.,  
Defendants.

Case No. 1:22-cv-01313-JLT-EPG (PC)  
ORDER VACATING FINDINGS AND  
RECOMMENDATIONS ISSUED ON  
DECEMBER 7, 2022 (ECF NO. 9)

Darryl W. Hudson (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* this civil rights action filed pursuant to 42 U.S.C. § 1983.

On December 7, 2022, the Court issued findings and recommendations, recommending that this action be dismissed because it is barred by the favorable termination rule. (ECF No. 9). In the findings and recommendations, the Court informed Plaintiff that, “[i]f Plaintiff believes the punishment for the RVR did not affect the duration of his sentence, including if he is serving an indeterminate sentence, he may file objections to these findings and recommendations explaining that position.” (*Id.* at 6 n.1).

On December 19, 2022, Plaintiff filed his objections to the findings and recommendations. In his objections, Plaintiff alleges that he is serving a sentence of life without the possibly of parole. Plaintiff asks if he can voluntarily dismiss this action, not be required to pay the filing fee for this action, and file a petition for a writ of habeas corpus

Given Plaintiff's allegation that he is serving a sentence of life without the possibility of parole, it appears that success in this action would not necessarily demonstrate the invalidity of Plaintiff's confinement or its duration, and that this action is thus not barred by the favorable termination rule. Accordingly, the Court will vacate the findings and recommendations and screen Plaintiff's complaint in due course. The Court notes that while Plaintiff may voluntarily dismiss this action pursuant to Federal Rule of Civil Procedure 41, Plaintiff's application to proceed *in forma pauperis* has been granted and Plaintiff is required to pay the filing fee for this action (ECF No. 8).

IT IS SO ORDERED.

/s/ Eric P. Grogg  
UNITED STATES MAGISTRATE JUDGE